
OLR Bill Analysis

sSB 155

AN ACT CONCERNING PROBATE COURTS.

SUMMARY:

This bill makes numerous changes in the laws that govern adult adoptions. It:

1. establishes new hearing notice requirements and factors the court must consider before approving such an adoption,
2. allows one biological parent to join in an adult child's adoption agreement,
3. terminates the legal relationship between the adopted person and the parent who does not join the agreement (thereby limiting an adopted person to two parents), and
4. allows an adopted person (adult or minor child) to inherit from or through a parent who died before the adoption occurs.

The bill makes numerous changes in the laws that govern the distribution of the property of a person who dies without a will (i.e., intestate succession) as it relates to children born out of wedlock. In determining the inheritance rights of such a child or his or her father, the bill requires the child's paternity to be established by (1) court adjudication or (2) written acknowledgment signed by both the mother and father.

The bill also establishes a framework that allows a party in a probate court case involving guardianship, parental rights, or adoption to petition the court to make certain findings that a person may use to apply to the U.S. Citizenship and Immigration Services (USCIS) for special immigrant juvenile status (SIJS) (see BACKGROUND). SIJS allows an immigrant child who has been abused, neglected, or

abandoned to legally remain in the United States.

The bill expands the circumstances in which the Superior Court may disclose confidential juvenile records.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014

§ 2 — ADULT ADOPTION

By law, a person over age 18 may be adopted by a non relative older than him or her under a written agreement, approved by the probate court.

The bill eliminates a requirement that the court provide public notice of the time and place of the hearing on the agreement. It instead requires the court to provide a notice to (1) each party to the adoption agreement and (2) the spouse of the proposed adoptive parent, if he or she is not a party to the agreement. It allows the court to also notify other people interested in the proposed adoptive parent's or adopted person's welfare.

Probate Court Approval

The bill requires the court to approve the adoption agreement if it finds that the (1) proposed adoptive parent and adopted person share a relationship like that between a parent and his or her adult child and (2) adoption is in their best interests. Under current law, the court may approve the agreement if it finds that approval is for the public interest and the welfare of the adopted person.

Joining the Adoption Agreement

Under current law, when one of the parents of an adult child dies, the surviving parent's spouse may adopt the child without the surviving parent joining the adoption agreement, if the surviving parent gives written consent. The bill instead (1) allows one parent to join with his or her spouse or another person in an adult child's adoption agreement and (2) terminates the legal relationship between the adult child and the parent who did not join the adoption

agreement. Under the bill, adoption does not affect the adopted person's rights to inherit from or through a parent who died before the adoption occurred.

The law, unchanged by the bill, prohibits a married person from adopting an adult if his or her spouse does not join in the adoption agreement, unless the court finds that there is reason why the spouse should not join in the agreement.

§ 1 — LEGAL EFFECTS OF ADOPTION

Legal Relationship — Biological Parent and Adopted Adult Child

Under current law, with some exceptions, a final decree of adoption terminates the legal relationship between the adopted person and his or her biological parent or parents and their relatives with regard to (1) the applicability of certain statutes, (2) inheritance rights, and (3) the construction of documents and instruments executed before or after the adoption decree was issued.

Under the bill, the legal relationship is not terminated in the case of an adult child adoption whose biological parent joins the adoption agreement.

Inheritance Rights of an Adopted Minor Child

Under the bill, adoption does not affect an adopted minor's rights to inherit from or through a parent who died before the adoption occurred. Under current law, an adopted child retains those inheritance rights only in cases in which the spouse of the surviving biological parent adopts the minor.

§§ 3-6 — INHERITANCE RIGHTS OF A CHILD BORN OUT OF WEDLOCK AND HIS OR HER FATHER

When a person dies intestate, the intestate succession laws determine to whom and how the person's property is distributed.

The bill aligns the means by which a court establishes paternity in various intestate succession statutes with the procedure for establishing paternity for all other legal purposes. Under this procedure, the father of a child born out of wedlock is considered the

child's parent for intestate succession purposes only if the child's paternity is established either (1) through a court proceeding after the mother files a petition and serves process on the putative father or (2) by the father's written acknowledgment. A written acknowledgment must be accompanied by (1) an attested waiver of a right to a blood test, a trial, or an attorney and (2) written affirmation of paternity executed and sworn to the child's mother.

§ 4 — *Distribution of Property to Children Including Those Born Out of Wedlock*

By law, when a person dies intestate, his or her estate is first distributed to the surviving spouse. The residual estate is then distributed equally among the children, including those born out of wedlock.

The bill changes the requirements for a child who was born out of wedlock to qualify for inheritance from or through his or her father's estate by changing how the father's paternity is established, as described above (i.e., through a court proceeding or his written acknowledgment.)

Under current law, a person is considered the child of his or her genetic parents for intestate succession purposes, regardless of the parents' marital status. And, the father of a child born out of wedlock is considered a parent if:

1. he and the mother marry each other after the child's birth;
2. he has been adjudicated the father of the child by a court of competent jurisdiction;
3. he has acknowledged under oath in writing that he is the father of the child; or
4. after his or the child's death, the probate court establishes paternity by clear and convincing evidence that the father has acknowledged in writing that he is the child's father and has openly treated the child as his.

§ 5 — *Inheritance Rights of a Father of a Child Born out of Wedlock*

Under current law, in order for a father or his relatives to qualify for inheritance from or through a child born out of wedlock who dies intestate, the father's paternity must be established by (1) a court of competent jurisdiction before the father's death or (2) the probate court after the father's death, if it has been demonstrated by clear and convincing evidence that the father acknowledged his paternity in writing and openly treated the child as his.

Under the bill, a father and his relatives qualify for inheritance from or through a child born out of wedlock who dies intestate if the father's paternity was established through court adjudication or written acknowledgement signed by both the mother and the father.

The bill also changes the way in which paternity is established in order for a child who was born out of wedlock to qualify for inheritance as an issue under this scenario. Under the bill, "issue" includes (1) a child born out of wedlock whose father's paternity was established either through a court proceeding or by the father's written acknowledgement accompanied by (a) an attested waiver of a right to a blood test, a trial, or an attorney and (b) written affirmation of paternity executed and sworn by the mother of the child, and (2) the legal representative of such a child.

Under current law, "issue" includes children born out of wedlock, and their issue, where the father's paternity was established by:

1. the father and mother marrying each other after the child's birth,
2. the father being adjudicated the father of the child by a court of competent jurisdiction;
3. the father acknowledging under oath in writing that he is the father of the child; or
4. the probate court, after the death of either the father or the child, by clear and convincing evidence that the father acknowledged

in writing that he was the father of the child and openly treated the child as his.

§ 3 — *Distribution to Spouse*

Existing law prescribes the portion of a person's estate that is distributed to the surviving spouse when the person dies intestate or leaves a will that does not fully dispose of all the property.

By law, the surviving spouse gets:

1. the entire intestate estate, if there is no surviving "issue" or parent of the decedent;
2. the first \$100,000 plus three quarters of the balance of the intestate estate, if there is no surviving issue but the decedent is survived by a parent or parents;
3. the first \$100,000 plus half of the balance of the intestate estate, if there is surviving issue who are all also children of the surviving spouse;
4. half of the intestate estate, if there is surviving issues and at least one is not an issue of the surviving spouse.

Under the bill, a father of a child born out of wedlock must be considered a parent for estate distribution purposes if he qualifies for inheritance from or through such a child who dies intestate (see § 5).

The bill also changes the way in which paternity is established in order for a child born out of wedlock to qualify for inheritance as an issue under this scenario by changing the definition of issue as described in § 5 above.

§ 6 — *Distribution When There are No Children or Representatives*

When a person dies intestate, if there are no children or their legal representatives, existing law prescribes how the residual estate of the intestate must be distributed. By law, after distribution to any surviving spouse, the residue of the estate is distributed equally to the

parent or parents of the intestate, then equally to the intestate's siblings and any legal representatives, then equally to the "next of kin", then equally to stepchildren and their legal representatives.

Under this scenario, the bill makes a father of a child born out of wedlock and the father's relatives qualify for inheritance from or through that child if paternity is established either through a court proceeding or by the father's written acknowledgement accompanied by (a) an attested waiver of a right to a blood test, a trial, or an attorney and (b) written affirmation of paternity executed and sworn by the mother of the child. And, the relatives of that child's father qualify for inheritance as next of kin, if the father would have qualified for inheritance from or through that child who was born out of wedlock (see § 5).

§ 7 — PATERNITY CLAIM REGARDING CHILDREN BORN OUT OF WEDLOCK

By law, if a person claiming to be the father of a child born out of wedlock receives notice from the Superior Court of a petition filed to terminate his parental rights, he has 60 days to file a paternity claim with the probate court in the district where either the mother or the child resides. Under current law, if no such notice has been received, the person may file the claim at any time. The bill specifies that such a paternity claim may be filed at any time during the child's life, regardless of his or her age, and also after the child's death. It eliminates a requirement for the probate court administrator to appoint a three-judge court to hear the paternity claim.

§§ 8 & 9 — PROBATE COURT'S JURISDICTION REGARDING SPECIAL IMMIGRATION JUVENILE STATUS (SIJS)

The bill allows probate courts, in certain family matters, to make findings that someone can use to apply to the USCIS for SIJS (see BACKGROUND). By law, a person granted SIJS is allowed to stay in the United States. Under federal law, one of the criteria for getting SIJS status is for a child to be determined a dependent on a juvenile court.

Under the bill, a child under age 18 must be considered dependent

on the court, if the court has:

1. removed his or her parent or another person as guardian,
2. appointed a guardian or co-guardian for him or her,
3. terminated the parental rights of his or her parent, or
4. approved his or her adoption.

§ 8 — Parental Removal or Guardian Appointment

The bill allows a party, at any time during a case for parental removal or guardian appointment, to file a petition requesting the court to make certain findings to be used for SIJS purposes. A hearing on the petition may be held at the same time as the underlying case.

Notice. The probate court must send notice of the hearing on the petition, by first class mail, to (1) the commissioner of children and families; (2) both parents; and (3) the child, if he or she is over age 12.

Written Findings. If the court grants the underlying petition to remove the parent or other person as guardian or to appoint a guardian or co-guardian, the court must make written findings on the following:

1. the child's age and marital status;
2. whether the child is dependent upon the court;
3. whether reunification of the child with one or both of the child's parents is not viable because he or she was (a) abandoned by the parent, (b) denied the care necessary for his or her well-being, (c) physically injured intentionally by a person responsible for his or her well-being or a person given access to the child by the responsible person, or (d) neglected or uncared for; and
4. whether it is not in the child's best interests to be returned to the child's or parent's country of nationality or last customary residence.

Removal or Appointment Previously Granted. Under the bill, a parent, guardian, or attorney for the child may petition the court to make findings for SIJS purposes, if the court previously granted the request to remove a parent as guardian or appointed a guardian for the child.

The court must (1) notify, by first class mail, each parent, guardian, and attorney for the child and the child, if he or she is age 12 or older, of the petition hearing and (2) make written findings on the issues listed above.

§ 9 — Termination of Parental Rights or Adoption Approval

The bill allows a party, at any time during a case for terminating parental rights or approving an adoption, to petition the probate court to make certain findings to be used for SIJS purposes. A hearing on the petition may be held at the same time as the underlying case.

Notice. The court must send notice of the hearing on such petition, by first class mail, to the:

1. parents, including anyone who was removed as guardian;
2. father of any child born out of wedlock who, at the time of the petition, (a) was adjudicated the father by a court, (b) acknowledged paternity in writing, (c) provided regular support to the child, (d) was named on the birth certificate, (e) filed a paternity claim, or (f) was named by the mother in a petition to establish paternity;
3. guardian or others the court deems appropriate;
4. commissioner of children and families; and
5. the attorney general.

Written Findings. If the court grants the underlying petition to terminate parental rights or approve the adoption, it must make written findings on:

1. the child's age and marital status,
2. whether the child is dependent upon the court, and
3. whether it is not in the minor child's best interests to be returned to the minor child's or parent's country of nationality or last customary residence.

The court must also make written findings on whether reunification of the minor child with one or both of the child's parents is not viable due to:

1. abandonment,
2. denial of the care, guidance, or control necessary for the child's physical, educational, moral or emotional well-being,
3. absence of an ongoing parent-child relationship and allowing time for the establishment or reestablishment of such a relationship would not be in the child's best interests,
4. a parent's failure to rehabilitate to assume a responsible position in the life of the child,
5. the termination of parental rights related to another child, or
6. the parent's commission of certain crimes.

Termination or Adoption Previously Granted. Under the bill, a statutory parent, guardian, adoptive parent, or attorney for the minor child may petition the court to make findings for SIJS purposes, if the court previously terminated the parental rights or approved the adoption.

The court must (1) give notice of the petition, by first class mail, to the statutory parent, each guardian, adoptive parent, attorney for the minor child, the minor child, if he or she is age 12 or older, and other persons as it determines; and (2) make written findings on the items listed above.

§ 10 — DISCLOSURE OF JUVENILE RECORDS

The bill allows the Superior Court to disclose confidential records of cases of juvenile matters, including those involving delinquency matters, to probate court judges and employees who need access to such records to do their work. Existing law, records on matters transferred to, or on appeal from, a probate court to a Superior Court are available to the probate court from which the matter was transferred or appealed.

By law, “records of cases of juvenile matters” include (1) court records; (2) records maintained by the Court Support Services Division, law enforcement agencies, or any organization or agency contracted with the Judicial Branch to provide services to juveniles; and (3) studies and reports by juvenile probation officers, public or private institutions, and social agencies and clinics.

The bill specifies that it must not be construed to prohibit a party from making (1) a timely objection to the admissibility of records of cases of juvenile matters in Superior Court proceedings or (2) a motion to seal such records.

BACKGROUND***SIJS***

By law, the Department of Homeland Security may grant SIJS to an immigrant in the United States if:

1. he or she has been declared dependent on a juvenile court or whom a juvenile court has legally committed to, or placed under the custody of, a state agency or department, or a person or entity appointed by a state or juvenile court located in the United States;
2. his or her reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
3. it was determined in an administrative or judicial proceedings that it would not be his or her best interest to be returned to the

child's or parent's previous country of nationality or last habitual residence (8 USCA § 1101(a)(27)(J)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 32 Nay 0 (04/01/2014)